

IN THE UNITED STATE BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

**IN RE:**

CHARLES MARTINEZ FONTANEZ  
AMARILIS SEMIDEY ALICEA

**DEBTOR (S)**

FIRSTBANK Puerto Rico  
**MOVANT**

CHARLES MARTINEZ FONTANEZ  
AMARILIS SEMIDEY ALICEA  
José Carrion Morales  
TRUSTEE - Chapter 13  
**RESPONDENT'S**

CASE NO.: 20-02518 (BKT)

**CHAPTER 13**

(x) Opposition to plan confirmation under Title 11 §1325(a) (5) on Plan Confirmation, Adequate Protection and Equal Monthly Payments & Title 11 USC §1325(a) (6), on Feasibility Test or Sufficiency on the Funding of a Proposed Plan

**MOTION OBJECTING THE CONFIRMATION OF THE PLAN**

**TO THE HONORABLE COURT:**

COMES NOW, Movant **FIRSTBANK Puerto Rico**, through its undersigned attorney and very respectfully states and preys:

**I. INTRODUCTION.**

1- The jurisdiction of the Honorable Court is ascertain under Title 28 USC §1334, Title 28 USC §157, Title 11 USC §361 and 11 USC §1325(a) (5) (B) (iii), on *Adequate Protection* and Title 11 USC §1325(a) (5) (B) (iii) on *Confirmation of Plan*, 11 USC §1325(b) (6) on *Feasibility Test*. See Lundin, Keith M.; on Chapter 13 Bankruptcy: Chapter 5, at §5.56 on Feasibility.

**II. FACTS.**

2- Movant's standing is ascertained as it filed on July 14, 2020, an unsecured claim to a personal loan for 9,461.36 under account 0125. See, Clm. Reg. 2.

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3- The debtor(s) filed a bankruptcy case under chapter 13 on June 29, 2020. The plan provides for the payment of \$125.00 x 60 for the total base of \$7,500.00. Yet, the propose plan is not feasible in as much as debtor is not receiving the income of \$584.62 form "Seguritas". See, Bkcy Dck 1, 4, 10 at page 2 of 6, and 13.

### **III. APPLICABLE LAW.**

Bankruptcy L Rule 9013-2 (a) specifically provides that except as provided in subsection (b) of this LBR, any motion or response thereto must be accompanied by supporting memorandum that contains the points and authorities in support of the party's position, together with any affidavits or documents in support thereof.

4- Section 1325(a) (6) restrains the Court from confirming a plan where: (6) the plan calls for payments or other performance beyond even an optimistic appraisal of debtor's abilities. Id. Lundin, Keith M., pg. 5-161

6- Feasibility, although an ample concept at its simplest requires that the debtor's income exceeded expenses by an amount sufficient to make the payments proposed under the plan. Where the debtor's budget will not support the payments into the plan, the plan is not feasible, and confirmation must be refused. In Re Belden, 144 BR 1010 (Bkcy. D. Minn. 1992)

7- Title 11 USC §1325(b)(1) under the reform provides that if the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan- (A) the value of the property to be distributed under the plan on such account is not less than the amount of such claim; or (B) the plan provides for all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

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8- Accordingly, when the funding of a case depends on the future income from commissions it has been ruled by the Honorable Bankruptcy Court's "future income from commissions is speculative to support feasibility of plan. In Re Rose, 101 BR 934 (Bankr. S. D. Ohio 1989). See as well, In Re Wilkinson, 99 BR 366 (Bankr. N. D. Ohio 1989) where the Honorable Bankruptcy Court denied confirmation where monthly income of \$2,268.00 did not permit monthly expenses of \$2,070.00, plan payments of \$150.00, plus payments to secured lien claim holders "outside" plan totaling \$10,038.00.

#### **IV. PLEA.**

9- Movant's standing is ascertained as it filed on July 14, 2020, an unsecured claim to a personal loan for 9,461.36 under account 0125. See, Clm. Reg. 2.

10- The debtor(s) filed a bankruptcy case under chapter 13 on June 29, 2020. The plan provides for the payment of \$125.00 x 60 for the total base of \$7,500.00. Yet, the propose plan is not feasible in as much as debtor is not receiving the income of \$584.62 form "Seguritas". See, Bkcy Dck 1, 4, 10 at page 2 of 6, and 13.

11- In as much as it appears debtor will not be able to comply with 11 USC 1325 (a) (6), Movant cannot accept the plan as proposed, since the debtor, even with her best intentions, have a feasibility problem.

**WHEREFORE**, is respectfully requested from this Honorable Court not to confirm the plan until the debtor's evidenced compliance adequate protection and continue monthly payments.

#### **RESPONSE TIME NOTICE**

Within fourteen (14) days after service as evidenced by the certification, and additional three (3) days pursuant to Fed. R. Bankr. P. 9006 (f) if you were served by mail, any party against whom

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this paper has been served, or any party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's Office Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

**Rule 9013-1 (h)**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on this the same day of the filing of this motion the a copy of this Motion its being sent by first class mail to the debtor(s) CHARLES MARTINEZ FONTANEZ & AMARILIS SEMIDEY ALICEA, at the address on the docket, URB. JARDINES DEL MAMEY, STREET 6 K-3, PARILLAS, PUERTO RICO 00723; by the Bankruptcy CM/ECF System to the Debtor(s) counselor MANUEL E FUSTER MARTINEZ, at the address on the docket,; by first class mail to Atty. Alejandro Oliveras Rivera, the Chapter 13 - US Trustee, at the address on the docket, PO Box 9024062, Old San Juan, PR 00902-4062/ Atty. José Carrión Morales, the Chapter 13 - US Trustee, at the address on the docket, PO Box 90223884, San Juan, P. R. 00902-3884, and to all the creditor's in the List of Creditors.

In San Juan, Puerto Rico, the 20<sup>th</sup> of August 2020.

BY: /s/ María M. Benabe Rivera  
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